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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,196	08/04/2003	Daniel E. Pedersen	163.1796US01	7100
23552	7590	08/24/2005	EXAMINER	
<b>MERCHANT &amp; GOULD PC</b> P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				DELCOTTO, GREGORY R
ART UNIT		PAPER NUMBER		
		1751		

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/634,196	PEDERSEN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Gregory R. Del Cotto	1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 May 2005.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 and 13-34 is/are pending in the application.  
 4a) Of the above claim(s) 8-11 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-7, 13-34 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

1. Claims 1-11 and 13-34 are pending. Applicant's amendments and arguments filed 5/2/05 have been entered.

Applicant's election of Formula III, claims 1-7 and 12-28 in the reply filed on 5/2/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 8-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 5/2/05.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al (US 6,617,303) in view of Baker et al (US 2002/0119907).

Smith et al teach surfactant compositions containing ethoxylated amines. The disclosed surfactant compositions may be used in the formulations of heavy duty laundry detergents, herbicide emulsifiers, hard surface cleaners, bathroom cleaners, all-purpose cleaners, car wash detergents, janitorial cleaners, and light duty liquid detergents. The detergent compositions include at least one anionic surfactant. See column 2, lines 19-35. Suitable ethoxylated ether amines have the same formula as Formula III as recited by the instant claims. See column 3, lines 10-20. The surfactant composition includes from about 8% to 35% of anionic surfactants which include at least one of alkyl benzene sulfonate, alkyl sulfate, alkyl ether sulfate, etc., from about 8% to about 35% of the surfactant actives by weight of an ethoxylated surfactant wherein the ethoxylated surfactant is at least one of ethoxylated amine; from about 15% to about 55% of a nonionic surfactant wherein the nonionic surfactant includes at least one of nonylphenol ethoxylate, alcohol ethoxylate, ethylene oxide/propylene oxide block copolymer; from 10% to about 90% by weight water, from about 0% to about 9% neutralizing compound wherein the neutralizing compound includes at least one of alkanolamine, alkylamine, ammonium hydroxide, sodium hydroxide, potassium hydroxide, or mixture thereof. See column 3, lines 30-65.

Additionally, amphoteric surfactants may be used in the compositions and include Rewoteric AMB 12P (cocamidopropyl dimethyl betaine), Rewoteric AM TEG (tallow glycinate), Rewoteric AM (cocoamphopropionate), etc. See column 16, lines 25-45. The compositions may be in liquid form with a solvent such as water, methanol, ethanol, isopropanol, etc. See column 17, line 60 to column 18, line 40.

Baker et al teach compositions for treating shoes, especially leather-containing shoes, such as athletic shoes. More particularly, the present invention relates to compositions applied to one or more shoes in need treatment prior to and/or during and/or after washing the shoes for imparting a desired benefit to the shoes such as cleaning and/or conditioning and/or disinfecting and/or deodorizing. See Abstract. The compositions include one or more benefit agents selected from the group consisting of cleaning agents, conditioning agents, disinfecting agents, odor control agents, and mixtures thereof. See para. 9. The water content of the concentrated liquid treating compositions may be less than or equal to about 50% by weight of the treating compositions. See para 96. Citric acid and soluble salts thereof are Ca/Mg removal agents that are suitable for the treating compositions. See para. 165. Additionally ethane-1-hydroxy-1,1-diphosphonate and other known phosphonates may be used in the compositions. See para. 172. Suitable anionic surfactants include C11-C18 alkyl benzene sulfonates, C10-C20 alkyl sulfates, etc. See para. 174. Suitable nonionic surfactants include ethoxylated alcohols, amine oxides, alkylpolysaccharides, fatty acid amide surfactants, etc. See para. 188 to para. 209. Suitable amphoteric surfactants include C12-C18-betaines, etc. See para. 255.

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Disinfecting agents may also be used in the compositions and include organic acids, preferably fatty acids such as octanoic acid, nonanoic acid, and/or decanoic acid. See para. 397. Specifically, Baker et al teach treating compositions containing nonanoic acid, water, isopropanol, etc. See para. 662.

Smith et al do not teach the use of an antimicrobial carboxylic acid or a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an antimicrobial carboxylic acid such as octanoic acid in the cleaning composition taught by Smith et al, with a reasonable expectation of success, because Baker et al teach the use of an antimicrobial carboxylic acid such as octanoic acid in a similar textile cleaning composition as a disinfectant and Smith et al teach the formulation of textile treatment compositions in general which would desirably include the disinfectants of Baker et al.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Smith et al in combination with Baker et al suggest a composition containing a carboxylic acid antimicrobial agent, alkoxylated

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amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 1-7, 13-17, 19, 20, 22-26, and 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al (US 2002/0119907) in view of Smith et al (US 6,617,303).

Baker et al are relied upon as set forth above. However, Baker et al do not teach the use of an alkoxylated amine surfactant or a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Smith et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkoxylated amine surfactant in the cleaning composition taught by Baker et al, with a reasonable expectation of success, because Smith et al teach that the addition of alkoxylated amine surfactants to similar detergent compositions provides improved detergent performance and further, Baker et al teach the use of numerous types of nonionic surfactants which would encompass alkoxylated amine surfactants.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed

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components, because the broad teachings of Baker et al in combination with Smith et al suggest a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 1-7, 13-17, 18, 19, 22-25, and 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 95/04459 in view of Smith et al (US 6,617,303).

'459 teaches microbicidal compositions for sanitizing inanimate surfaces. More specifically, the invention relates to microbicidal compositions which include an octanoic carboxylic acid and a sulfur containing compound as an antimicrobial agent. The composition is preferably safe for incidental human contact as well as food contact surfaces without requiring a post-santizing rinse. The microbicidal compositions are suitable for dairy farms, food and beverage processing plants, food preparation kitchens, food serving establishments, child-care, nursing care and hospital-care applications as well as for general utility in domestic households and institutions. See page 1, lines 5-20. The compositions also comprise a carrier. Suitable carriers include alcohols such as ethanol, isopropanol, etc. Any of these compounds may be used singly or in combination with another organic or inorganic carrier or, in combination with water, or in mixtures thereof. The composition may take the form of a neat solution or liquid concentrate. See page 14, lines 1-25.

The carrier may also comprise any number of surfactants or surfactant combinations. Suitable surfactants include anionic and nonionic agents such as polyoxyethylene glycerol esters, polyoxyethylene and polyoxypropylene block

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copolymers, dioctylsodium succinate, etc. See page 15, lines 5-17. The composition may also contain any number of adjuvants. Suitable adjuvants include acidulants useful in lowering the pH of the composition and include lactic acid, phosphoric acid, citric acid, malic acid, etc. The compositions may also comprise surface tension altering constituents such as various anionic and nonionic surfactants. Nonionic surfactants which are especially preferred include those surfactants having about 5 to 30 moles of ethoxylation and about 10-80 of propoxylation. See page 20, lines 10-20. Note that, sodium lauryl sulfate is used as an anionic surfactant in the Examples of '459.

'459 does not teach the use of an alkoxylated amine surfactant or a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Smith et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkoxylated amine surfactant in the cleaning composition taught by '459, with a reasonable expectation of success, because Smith et al teach that the addition of alkoxylated amine surfactants to similar detergent compositions provides improved detergent performance and further, Baker et al teach the use of numerous types of nonionic surfactants which would encompass alkoxylated amine surfactants.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a carboxylic acid

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antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '459 in combination with Smith et al suggest a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al (US 2002/0119907) in view of Smith et al (US 6,617,303), as applied to the rejected claims above, and further in view of Wulff et al (US 5,962,399).

Baker et al are relied upon as set forth above. However, Baker et al does not teach the use of cocamidopropyl betaine in addition to the other requisite components of the composition as recited by the instant claims.

Wulff et al teach a process for preparing high detergency or surfactant alkyl polyglycoside compositions and a purified alkyl monoglycoside. See Abstract. Additionally, Wulff et al teach the preparation of alkyl glycoside compositions having maximum stand-alone surfactant properties for specific end-use applications. See column 6, lines 40-60. Suitable amphoteric surfactants include the betaines such as cocamidopropyl betaine, etc. See column 27, lines 20-35. The compositions may be used as laundry detergents. See column 28, lines 10-25.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use cocamidopropyl betaine in the cleaning composition taught

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by Baker et al, with a reasonable expectation of success, because Wulff et al teach the use of cocamidopropyl betaine in a similar detergent composition and further, Baker et al teach the use of amphoteric surfactants in general.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al (US 2002/0119907) in view of Smith et al (US 6,617,303) as applied to claims 1-7, 13-17, 19, 20, 22-26, and 28 above, and further in view of Penninger et al (US 6,228,827).

Baker et al are relied upon as set forth above. However, Baker et al do not teach the use of 1-hydroxy ethylidene-1,diphosphonic acid as recited by the instant claims.

Penninger et al teach laundry detergents in liquid or gel-form which contain a mutated protease. See Abstract. The detergent compositions may also contain heavy metal complexing agents such as 1-hydroxyethane-1,1-diphosphonic acid, etc.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a complexing agent such as 1-hydroxyethane-1,1-diphosphonic acid in the cleaning composition taught by Baker et al, with a reasonable expectation of success, because Penninger et al teach the equivalence of 1-hydroxyethane-1,1-diphosphonic acid to its phosphonate salt in a similar composition and, further, Baker et al teach the use of ethane-1-hydroxy-1,1-diphosphonate as a complexing agent.

#### ***Response to Arguments***

With respect to the cited references, Applicants argues that Baker et al and '459 teach certain ingredients which are not required by the instant claims and that the

combination of ingredients taught by Baker et al or '459 are for a different purpose. In response, note that Baker et al in combination with Smith et al or '459 in combination with Smith et al disclose compositions containing the same ingredients in the same proportions as recited by the instant claims. Even though the motivation may be for a different purpose than that of Applicant's, the motivation exists and this is what is necessary to establish a *prima facie* case of obviousness; it is not necessary that the prior art teach the combination of ingredients for the same reason as Applicant. Additionally, note that the instant claims recite "comprising" which would not exclude the presence of other required components as taught by the prior art.

Applicant states that data has been presented in the specification which show the unexpected and superior properties of the claimed invention in comparison to those compositions falling outside the scope of the instant claims. In response, note that, it is not clear to the Examiner as to how the data shows any unexpected and superior results; it seems as though while data is presented for the claimed invention, there is no comparison made to compositions outside the scope of the instant claims.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gregory R. Del Cotto  
Primary Examiner  
Art Unit 1751

GRD